

OFFICIAL INFORMATIONCONFIDENTIAL**EVIDENCE CODE SECTION 1040
INTRADEPARTMENTAL CORRESPONDENCE**

DATE: January 17, 2019
TO: Honorable Board of Police Commissioners
FROM: Inspector General
SUBJECT: OFFICER-INVOLVED SHOOTING 008-18 FOR 1/22/19 CLOSED-SESSION
AGENDA

| <u>Division</u> | <u>Date</u> | <u>Time</u> | <u>Duty-On (X) Off ()</u> | <u>Uniform-Yes (X) No ()</u> |
|-----------------|-------------|-------------|---------------------------|------------------------------|
|-----------------|-------------|-------------|---------------------------|------------------------------|

| | | | | |
|--------|---------|------------|--|--|
| Harbor | 1/27/18 | 11:21 a.m. | | |
|--------|---------|------------|--|--|

| <u>Officer(s) Involved in Use of Force</u> | <u>Length of Service</u> |
|--|--------------------------|
|--|--------------------------|

| | |
|-------------------|--------------------|
| Shelley, T./PO II | 22 years, 4 months |
|-------------------|--------------------|

| <u>Total Involved Officer(s)</u> |
|----------------------------------|
|----------------------------------|

2 x PO II

| <u>Suspect</u> | <u>Deceased ()</u> | <u>Wounded ()</u> | <u>Non-Hit (X)</u> |
|----------------|--------------------|-------------------|--------------------|
|----------------|--------------------|-------------------|--------------------|

Salvador Miramontes, Male Hispanic, 19 years of age.

COP Recommendations

Tactics – Tactical Debrief, Officer Antiporda. Administrative Disapproval, Officer Shelley.

Drawing/Exhibiting – In Policy, No Further Action, Officers Shelley and Antiporda.

Non-Lethal Use of Force – In Policy, No Further Action, Officer Shelley.

Lethal Use of Force – In Policy, No Further Action, Officer Shelley.

IG Recommendations

Tactics – Same as COP.

Drawing/Exhibiting – Same as COP.

Non-Lethal Use of Force – Same as COP.

Lethal Use of Force – Same as COP.

Table of Contents

| | |
|--|-------|
| I. Investigation | |
| i. Annotated Force Investigation Division (FID) Incident Summary | p. 3 |
| II. Chief of Police Report | |
| i. Chief of Police Findings | p. 23 |
| ii. Chief of Police Analysis | p. 23 |
| III. Inspector General Review | |
| i. Inspector General Analysis | p. 33 |
| ii. Inspector General Recommendations | p. 33 |

INVESTIGATION

Synopsis

On Saturday, January 27, 2018, at approximately 1121 hours, uniformed officers responded to a juvenile group radio call at a park. While checking the area, a male suddenly stepped off his bicycle, simulated removing a pistol from his waistband and obtained a shooting stance with his hands pointed toward the officers. The officers perceived a deadly threat and an Officer-Involved Shooting (OIS) occurred.

Annotated Force Investigation Division (FID) Incident Summary¹

On Saturday, January 27, 2018, uniformed Harbor Patrol Division Police Officers II Terry Shelley, Serial No. 32129, and Sherwin Antiporda, Serial No. 36075, Unit 5A25, responded to a juvenile group radio call at the Wilmington Recreation Center (Will Hall Park).² The comments of the call indicated that there were three juveniles wearing blue clothing, sitting on a park bench, smoking marijuana and drinking alcohol (Addendum No. 1).

Note: According to Officer Shelley, he and Officer Antiporda have worked together on and off for three to four years. They have discussed tactics such as contact/cover, pedestrian stops and foot pursuits. According to Officer Antiporda, he has known Officer Shelley for approximately 10 years, and they have worked together dozens of times. Officer Antiporda stated that they have discussed tactics that include armed suspect, foot pursuit, and containment/apprehension scenarios.

At approximately 1117 hours, the officers were in proximity of the Wilmington Recreation Center and placed themselves Code Six via their Mobile Digital Computer

¹ The Incident Summary presented here is reproduced from FID's report regarding this case, and is supplemented with annotations by the OIG. All OIG annotations are referenced as an "OIG Note." All other references and citations in the reproduced FID Incident Summary (e.g., Investigators' Notes or Addenda Items) are reproduced directly from FID's report. Unless otherwise stated, all information provided in OIG annotations is derived from FID's investigation of this incident.

² Officer Shelley, 22 years and 4 months with the Department, 50 years of age, 5 feet 11 inches tall, 260 pounds, attired in full uniform, equipped with body armor, a Glock, Model 35, .40 caliber, semiautomatic pistol, Oleoresin Capsicum (OC) spray, two pairs of handcuffs, and an X26P TASER. Officer Shelley's Hobble Restraint Device (HRD) was carried in his equipment bag and his side-handle baton was in the police vehicle.

Officer Antiporda, 17 years and 2 months with the Department, 45 years of age, 5 feet 6 inches tall, 155 pounds, attired in full uniform, equipped with body armor, a Beretta, Model 92FS, 9-millimeter, semiautomatic pistol, Oleoresin Capsicum (OC) spray, two pairs of handcuffs, Hobble Restraint Device, and X26P TASER. Officer Antiporda's side-handle baton was inside the police vehicle. The officers were deployed in a marked black and white, Ford Explorer Police Interceptor sport utility vehicle, equipped with emergency lights and siren. Officer Antiporda was the driver and Officer Shelley was the passenger.

(MDC).³ Officer Antiporda drove south on Neptune Avenue, west on C Street, and then north on Bay View Avenue. Officer Shelley was familiar with the park and the location of the benches. These areas were visually checked but no juvenile group consistent with the information received in the radio call was observed.

Note: Officer Antiporda indicated that the officers drove to the parking lot on Bay View Avenue, exited and continued traveling north on Bay View Avenue, whereas Officer Shelley indicated they drove past the parking lot.

As the officers continued north on Bay View Avenue, Officer Shelley observed a male Hispanic, later identified as Salvador Miramontes, riding a bicycle north on the west sidewalk of Bay View Avenue, north of D Street. Officer Shelley described that Miramontes was wearing a "blue-checkered" shirt and believed he could be associated with the radio call.

Note: The comments of the radio call indicated the juvenile group was dressed in blue clothing. Miramontes was wearing a black and white checkered shirt and black pants. However, the shirt could be construed as being blue and white checkered as depicted in the photograph of Miramontes on the Officer Safety Alert (Addendum No. 2).

According to Officer Shelley, Miramontes crossed diagonally in front of their police vehicle to the east sidewalk. Officer Shelley momentarily lost sight of Miramontes because his view was obstructed by the vehicles parked along the east curb. Miramontes then re-appeared near the north end of the park, rode his bicycle west across Bay View Avenue to the west sidewalk and rode in a circle. All the while, Miramontes stared at the officers.

Officer Shelley perceived that Miramontes was very interested in the officers, which caught his attention. He knew the park to be frequented by West Side gang members with guns and drug activity and felt it prudent to keep an eye on him.

According to Officer Shelley, he stated, "...as we were driving I mention, I go, you know, that's maybe somebody that was involved with the call possibly, so I kept an eye on him."⁴

Note: Officer Antiporda did not report any communication with his partner before the shooting occurred and made no reference to Miramontes' aforementioned movement across Bay View Avenue, north on the east sidewalk and back to the west sidewalk.

³ Wilmington Recreation Center was located at 325 N. Neptune Avenue. The park boundaries were Neptune Avenue on the East, C Street on the South, Bay View Avenue on the West, and E Street on the North. D Street was intermittent at the point it diverged with the park.

⁴ Shelley, Page 6, Lines 22-25.

Miramontes then rode his bicycle south on the west sidewalk. Suddenly, Miramontes rode southeast into the street from between a white truck and a dark-colored vehicle parked in front of 435 Bay View Avenue. He described that Miramontes was aggressively riding fast and toward them with an angry expression. Officer Shelley estimated the police vehicle was traveling 5 to 10 miles per hour.

Note: Officer Antiporda reported this was when he first observed Miramontes.

As Miramontes reached the center of Bay View Avenue, he turned south and quickly rode toward the officers, which influenced Officer Antiporda to begin to stop the police vehicle to avert hitting Miramontes. Miramontes then suddenly stopped, straddled his bicycle, lifted his shirt with his left hand and reached into his front waistband with his right hand.

According to Officer Shelley, he observed a dark object as Miramontes' removed his right hand from his waistband. Officer Shelley described that Miramontes pointed his right hand straight out and used his left hand to cup his right hand as if holding a pistol in a two-hand shooting stance (Investigators' Note No. 1).

OIG Note No. 1: *An additional interview of Officer Shelley was conducted by FID, at the request of the OIG, to inquire further about his observations of the "dark object" and the waistband reach. A summary of this interview is contained within FID's supplemental report (see page 21 of this report).*

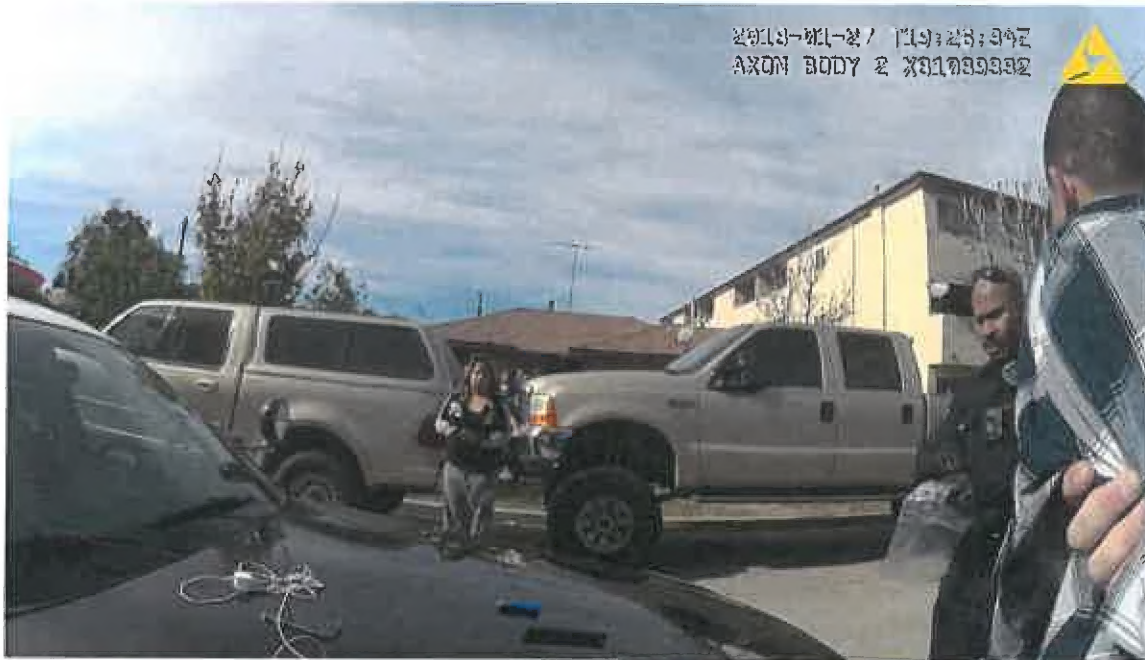
Note: Officer Antiporda described that Miramontes stepped off his bicycle, took a couple steps forward toward the officers as he reached into his waistband with his right hand and obtained a two-hand shooting position.

There was a black cellular telephone and large black pen removed from Miramontes' pockets when he was searched.⁵

OIG Note No. 2: *Officer Antiporda did not describe seeing Miramontes "reach into" his waistband. According to Officer Antiporda, "He [Miramontes] gets off his bike. Walks over (unintelligible) at the same time goes towards his waistband, and then points – gets in a two-handed position, and then points what I believe was a gun."*⁶ (Emphases added.)

⁵ These items were placed on the hood of a police vehicle and captured on Officer Smith's BWV.

⁶ Antiporda, Page 17, Lines 17-21.



Search of Miramontes

Officer Shelley stated, "And so, I—I also drew out my weapon at that time thinking he's got a gun to kill me and my partner"⁷

Officer Shelley drew his service pistol with his right hand, utilized a seated single-hand shooting position, aimed at center body mass and fired two rounds at Miramontes through the windshield of the police vehicle from approximately 51 feet.⁸

Note: Officer Shelley activated his Body Worn Video (BWV) approximately 1 minute and 55 seconds after he discharged his service pistol. The pre-event buffering provided for two minutes of video, absent the audio, prior to the activation. The Digital In-Car Video System (DICVS) was activated but captured only footage after the OIS (Investigators' Note No. 2).

Officer Shelley's BWV depicted him extending his right arm and pointing his service pistol toward the windshield immediately before he fired the two rounds but did not capture Miramontes' actions.

⁷ Shelley, Page 7, Lines 15-16.

⁸ Although Officers Shelley and Antiporda estimated the distance was 25 feet, the investigation established through the analysis of the physical evidence and the Body Worn Video that the distance was approximately 51 feet.



Officer Shelley's BWV

According to Officer Antiporda, he placed the police vehicle in park as Miramontes got off his bicycle. Meanwhile, he heard two shots and drew his service pistol because he believed Miramontes had a handgun and he needed to protect himself from the perceived threat.

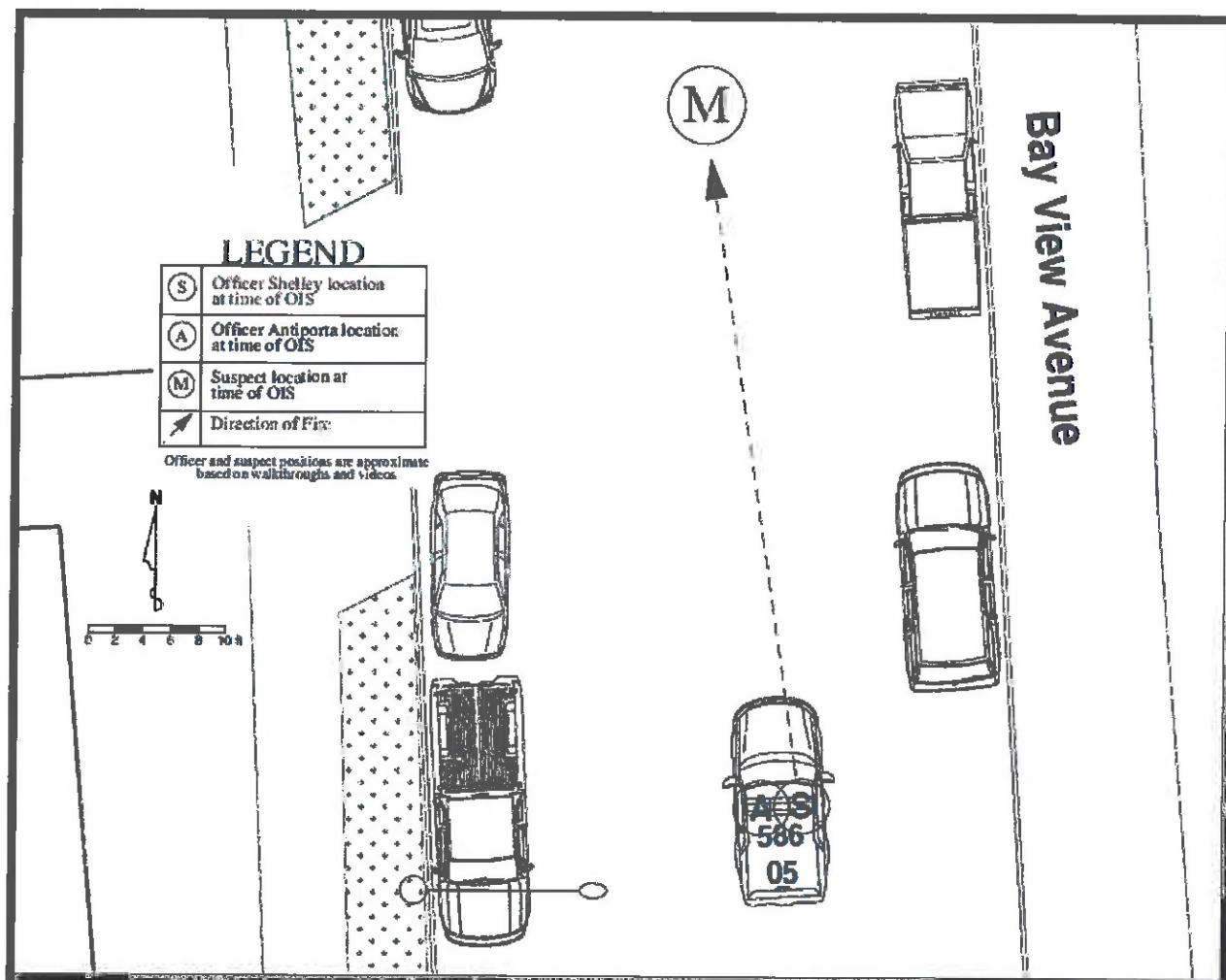
Note: Miramontes waived his Constitutional Rights and admitted he simulated pointing a gun at the officers. Miramontes stated, "I'm the one that was reacting [acting] as if I had a gun on me. And that's when the officers fired."⁹ When asked what he thought was going to happen when he simulated pointing a handgun at the police, Miramontes replied, "They shoot me because they feel threatened for their life, Sir." (Investigators' Note No. 3).¹⁰

OIG Note No. 3: *The questioning of Miramontes by FID investigators did not establish whether Miramontes had any object in his hands when he simulated pointing a firearm at the officers.*

Miramontes immediately fell to the ground. Officer Shelley stopped firing because he perceived Miramontes no longer posed an immediate threat. Officer Antiporda indicated he did not fire because Officer Shelley had fired and Miramontes went to the ground in a prone position.

⁹ Miramontes, Page 5, Lines 7-11.

¹⁰ Miramontes, Page 5, Lines 21-22.



Officer Antiporda then unbuckled his seatbelt, exited his driver's side door and took cover behind his ballistic door. Officer Shelley attempted to quickly exit the police vehicle but had difficulty unbuckling his seatbelt. He indicated that he had a can of Red Bull in his left hand, which was captured in his BWV as he exited the police vehicle. According to Officer Shelley, he directed Officer Antiporda to broadcast a help call as he attempted to remove his seatbelt. Officer Antiporda corroborated he was directed to broadcast the help call.

Note: Neither the verbal direction to make the broadcast nor the broadcast were audibly captured on either officers' BWV, establishing that it was done before or during the two minute rebuffering period when no audio was captured.¹¹

At 1121:45 hours. Officer Antiporda broadcast, "Officer needs help Bay View and E. Shots fired." In addition, he requested that units respond north on Bay View Avenue,

¹¹ Officer Antiporda activated his BWV 1 minute and 22 seconds after Officer Shelley.

from D Street. The Radio Telephone (RTO) broadcast this information but had to obtain clarification as to whether units were to respond north from D or E Street.

Once Officer Shelley removed his seatbelt, he exited the police vehicle and took cover behind his ballistic door, pointing his service pistol at Miramontes from a position just right of his open vehicle door. Officer Shelley's BWV depicted him standing at his open vehicle door for approximately 10 seconds before he moved to the rear driver's side of a red SUV parked adjacent to him, facing north on the east curb.

According to Officer Shelley, Miramontes continued to move his arms and was not listening to their commands when he heard someone near the east sidewalk and out of his view yelling and screaming. **This caused him concern for the potential of an additional suspect and/or possible ambush**, which influenced him to move to the rear passenger's side of the SUV. According to Officer Shelley, he communicated to his partner that there was an additional individual and advised him that he was going to move. He further stated that he inquired whether his partner had Miramontes covered so he could locate the second individual.

Note: Officer Antiporda made no reference to this communication being heard. This communication was not captured on either officers' BWV because it would have occurred during the two-minute pre-buffing period that does not capture audio.

Officer Shelley's BWV showed that he remained at his initial position at the SUV for approximately 55 seconds before he moved to the rear passenger side of the SUV. It was there that he observed a second individual, later identified as Eric McColoum, who was standing in the park adjacent to the sidewalk with his hands in the air.

Note: Officer Antiporda indicated that he made the help call after he exited the police vehicle and observed Officer Shelley with McColoum. Officer Shelley's BWV audio commenced immediately before he handcuffed McColoum and captured the sound of sirens. In addition, his BWV depicted a responding officer [Officer Villegas] standing at the passenger door of Officer Shelley's police vehicle immediately after McColoum was handcuffed. Both indicate that Officer Antiporda made the help call broadcast before Officer Shelley contacted McColoum.

According to Officer Shelley, McColoum was following directions so he holstered his service pistol and handcuffed him without incident. This decision was made because McColoum was compliant and Officer Shelley wanted to control him so he could transition back to assist Officer Antiporda with Miramontes. However, additional personnel arrived and were assisting Officer Antiporda as McColoum was being handcuffed.

As McColoum proceeded to walk toward the area where officers were taking Miramontes into custody, Officer Shelley asked McColoum where he was going and

used physical force as he held onto McColoum's left arm and directed him to the ground.

OIG Note No.4: Following the handcuffing of McColoum, Officer Shelley's BWV shows that McColoum appeared concerned for Miramonte's well-being and tried to walk towards Miramonte while being held by Officer Shelley. Officer Shelley asked McColoum where he was going and then directed him to sit on the sidewalk. Following a short remonstration from McColoum, Officer Shelley guided him into a seated position on the sidewalk.



Officer Shelley's BWV

As Officer Antiporda remained focused on Miramonte from behind the cover of his ballistic door, a marked black and white, Ford Explorer Police Interceptor can be seen on his BWV north of his location. This vehicle was occupied by uniformed Harbor Patrol Division Police Officers II Taylor Smith, Serial No. 41944, and John Kirkham, Serial No. 39709, Unit 5A15. They responded from the east and inadvertently drove north on Bay View Avenue, from E Street. Officer Kirkham navigated their response and admittedly misunderstood the broadcast wherein he believed they were to respond north from E Street, rather than D Street.

Officers Smith and Kirkham immediately identified their error, reversed their vehicle and proceeded south on Bay View Avenue. They parked south of E Street with the intent of obstructing southbound vehicular traffic from entering the scene. They identified and communicated the potential crossfire, which can be heard on their BWV.



Officer Smith's BMW arriving at location

Officer Kirkham deployed his patrol rifle, exited the police vehicle and moved to the west sidewalk. Officer Smith exited the driver's door and proceeded to the rear of his police vehicle as he also moved to the west sidewalk. Officer Smith drew his service pistol when he reached the sidewalk. They drew and exhibited their firearms because they responded to a shots fired help call and believed the tactical scenario posed the potential for a continued deadly threat. Officers Smith and Kirkham then proceeded south on the west sidewalk with the benefit of the cover provided by the vehicles parked on the west curb.

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Officer Kirkham's BWV

The following additional units responded to the help call:

- Uniformed Harbor Patrol Division Police Officer III Trevin Grant, Serial No. 32758, and Police Officer II Ryan Ranking, Serial No. 37944, Unit 5A1.
- Uniformed Harbor Patrol Division Police Officer III Daniel Ibarra, Serial No. 38642, and Police Officer I Christopher Villegas, Serial No. 43157, Unit 5A16.
- Uniformed Harbor Patrol Division Sergeant I Frank Ciezadlo, Serial No. 36372, Unit 5L50.
- Uniformed Harbor Patrol Division Sergeant I Phillip Clayson, Serial No. 32251, Unit 5L20.
- Uniformed Harbor Patrol Division Sergeant I Kathleen McCarthy, Serial No. 31213, Unit 5L40.

Meanwhile, Officers Ibarra and Villegas approached from the south and drew their service pistols as they approached Officer Antiporda's vehicle. They drew their service pistols because they had responded to a shots fired help call and believed the tactical scenario could escalate to the point where lethal force could be necessary (Investigators' Note No. 4).

According to Officer Ibarra, he directed Officer Villegas to "meet with Officer Shelley." This afforded for two officers on each side of the police vehicle as he moved to join Officer Antiporda at the driver's door. Officer Villegas' BWV shows him with his service pistol drawn at a position of cover behind the ballistic passenger door of Officer Shelley's police vehicle. He remained there for approximately 19 seconds before he heard a verbal altercation and moved to assist Officer Shelley. Officer Villegas

observed McColoum was handcuffed, holstered his service pistol and assisted with McColoum (Investigators' Note No. 5).

Officer Kirkham stopped in the apron of a driveway directly west of Miramontes and covered him with his patrol rifle. As Officer Villegas moved to assist Officer Shelley, his BWV captured Officer Kirkham moving to this position. As Officer Kirkham maintained this position, Officer Smith's BWV captured Miramontes getting up from his prone position. Officer Smith then can be heard using profanity when directing Miramontes to get back on the ground. Miramontes complied and returned to a prone position.



Officer Kirkham's BWV

According to Officer Ibarra, he assumed the role of incident commander (I/C) and directed Officers Smith and Kirkham to serve as the arrest team. While Officers Shelley and Villegas attended to McColoum, Officers Antiporda, Ibarra, Kirkham and Smith approached Miramontes as he lay prone on the ground. Officer Smith holstered his service pistol and proceeded to handcuff Miramontes without incident as Officers Antiporda, Ibarra and Kirkham covered Miramontes with their respective weapon systems. Officer Antiporda and Ibarra holstered their service pistols and Officer Kirkham slung his patrol rifle after Miramontes was handcuffed. Officer Smith assisted Miramontes to his feet, at which time he started to fall back to the ground. Officers Smith and Ibarra prevented Miramontes from falling to the ground by catching his arms and lowering him slowly to the ground. Miramontes then claimed he had been shot.



Officer Smith's BWV

Sergeant Ciezadlo observed Miramontes fall toward the ground. At 1125:05 hours, he requested the response of a Rescue Ambulance (RA). Moments later, Miramontes advised he was just kidding, causing officers to evaluate his condition further. It was determined that Miramontes was not injured; the RA response was canceled.

Miramontes was momentarily placed against the front, passenger side quarter panel of a police vehicle, where he suddenly struck his head on the hood. Officer Smith pulled Miramontes back and placed his hand on the back of Miramontes head to prevent him from lifting his head to further strike it on the hood. Miramontes was not injured.

[This space intentionally left blank.]



Officer Smith's BMW when Miramontes hit his head

Sergeant Clayson asked Officer Shelley if he was involved in the OIS, and he nodded in an affirmative manner. Sergeant Clayson waited for Officer Shelley and other officers to secure McColoum in the back seat of a police vehicle before separating Officer Shelley. Sergeant Clayson then obtained a Public Safety Statement (PSS). Sergeant Clayson monitored Officer Shelley at scene, and then transported Officer Shelley to Harbor Police Station, where he continued to monitor Officer Shelley in the Sergeant's Room.

OIG Note No. 5: McColoum was detained and transported to Harbor Police Station, where he was held and subsequently interviewed by FID investigators approximately five hours after the OIS.

Sergeant McCarthy arrived at scene and obtained a PSS from Officer Antiporda. Sergeant McCarthy then transported Officer Antiporda to Harbor Police Station and monitored him in the Sergeant's Room.

Officer Grant was directed to transport Miramontes to Harbor Police Station. While enroute, Miramontes was rambling, and he stated that it wasn't the officer's fault and that he acted as if he had a gun. Once at the Harbor Police Station, Miramontes demonstrated how he simulated pointing a gun at the officers.

Note: A surveillance camera located inside the holding cell captured Miramontes demonstrating to Officer Rankin how he simulated pointing a handgun at the officers (Control No. 723819).

At approximately 1208 hours, the Department Operation Center (DOC) was notified of the Categorical Use of Force.

The first representative from Force Investigation Division (FID) arrived at 1330 hours. Force Investigation Division Detective II Victor Salguero, Serial No. 31018, reviewed all documents and circumstances surrounding the separation, monitoring and admonition not to discuss the incident prior to being interviewed by FID investigators. All protocols were followed and were appropriately documented (Addendum No. 3).

Scene Description

The OIS occurred in front of 423 Bay View Avenue in the City of Los Angeles. Bay View Avenue was a north/south roadway with a single lane of traffic in each direction and vehicle parking along the east and west curbs. Bay View Avenue measured approximately 42 feet in width, with concrete sidewalks on both sides. The east sidewalk measured approximately 11 feet in width, the west sidewalk measured approximately five feet with a grass parkway that measured approximately six feet in width. The neighborhood consisted of Wilmington Recreational Center/Park on the east side of Bay View Avenue, and single-family residences and apartment buildings on the west side.

The OIS occurred on the roadway in front of 423 Bay View Avenue, at approximately 1121 hours, during daylight hours. The environmental conditions were dry and sunny with clear skies.

Canvass for Witnesses

After the OIS, Harbor Division police officers canvassed the area for witnesses. Officers completed Field Interview (FI) cards noting if anyone saw or heard anything. An additional canvass was conducted by FID personnel on February 14, 2018. Unless otherwise noted, the statements of all witnesses were recorded and transcribed and are contained in this report.

Suspect information

Salvador Miramontes was a male Hispanic, black hair, brown eyes, 5 feet, 11 inches tall, 130 pounds, 19 years of age, with a date of birth of May 1, 1998. Miramontes was identified by his CII number of A32736344 (Addendum No. 4). Miramontes is a self-admitted gang member of the West Side Wilmas criminal street gang, known by the monikers of "Vicious" and "Drisk".

Miramontes' criminal history included detained petitions for Receiving Stolen Property, Felony Evading, Resisting Arrest, Driving Without Owner's Consent, Possession of a Weapon on School Grounds, Attempted Robbery, Inflicting Injury Upon a Child, Battery, Contempt of Court, Vandalism and Driving Without a License. Miramontes was on summary probation for 273(D) PC—Inflicting Injury Upon a Child.

Miramontes was placed on a 72-hour 5150 Welfare and Institutions Code (WIC) mental evaluation hold and was transported to Las Encinas Hospital in the City of Pasadena, Mental Evaluation Unit (MEU) Case No. 2585935.¹²

Injuries

Neither Miramontes nor the officers were injured as a result of the OIS.

Evidence

On January 27, 2018, Forensic Science Division (FSD), Firearms Analysis Unit (FAU), Criminalists Daniel Rubin, Serial No. G9077, and Bethany Muro, Serial No. N4624, responded to 423 Bay View Avenue and conducted an examination of the crime scene for ballistic impacts, trajectories, and projectiles. They also collected and booked all of the evidence recovered at the crime scene, including Miramontes' bicycle (Item 1), Bullet fragments (Items 2 & 3), and two cartridge cases (Items 4 & 5). There were five items of evidence collected and booked in conjunction with this investigation (Addendum No. 5).

Clothing Analysis

Due to the fact Miramontes was not struck by gunfire, a clothing analysis of his clothing was not requested.

Weapons

Police Officer II Terry Shelley was armed with his Department-authorized .40 caliber Glock, Model 35, semiautomatic pistol. When fully loaded, the pistol held 15 cartridges of Department-approved Smith and Wesson (S&W) Winchester Ranger .40 caliber, 180 grain SXT, jacketed hollow point ammunition in the magazine, and one cartridge in the chamber. Officer Shelley carried his service pistol in a Department-approved Safariland, triple-retention holster, which he wore on his right hip.

On January 22, 2018, at approximately 1625 hours, Detective II Nicholas Pikor, Serial No. 35384, conducted a post-incident examination of Officer Shelley's pistol. He determined the firearm was loaded with one round in the chamber and thirteen rounds in the seated magazine. Detective Pikor also inspected the two magazines that Officer Shelley carried in his magazine pouch. Both magazines were loaded to capacity, with 15 rounds each, with the same Department-approved ammunition. This information was consistent with Officer Shelley having fired a total of two rounds.

Note: During the inspection, it was noted that Officer Shelley's pistol had an aftermarket striker plate that carried the emblem of the American Flag (Investigators' Note No. 5).

¹² 5150 WIC authorizes a qualified officer or clinician to involuntarily confine a person suspected to have a mental disorder that makes them a danger to themselves, a danger to others, or gravely disabled.

On March 5, 2018, Criminalist Rubin completed a report documenting the test firing of Officer Shelley's pistol. The pistol was found to be functional and the trigger pull value for this pistol was within the Department specifications (Addendum No. 6).

Force Investigation Division Detective II Timothy Grabe, Serial No. 32649, verified that Officer Shelley's .40 caliber Glock pistol was entered into the Firearm Inventory Tracking System on June 10, 2004.

Firearms Analysis

A total of two-discharged .40 caliber cartridge casings were collected from the center console of Officer Shelley's police vehicle, Shop No. 80586.

Criminalists from FSD FAU identified two impacts with two corresponding pathways on the windshield of the officers' vehicle. Both pathways were consistent with projectiles traveling from south to north, and slightly east. Impacts, pathways, and evidence were photographed by Photographer Norman Sugimoto, Serial No. N3784, under D No. 0640248 (Addendum No. 7).

Visual Documentation

Digital In-Car Video System (DICVS)

Responding police vehicles were equipped with DICVS. The video from the Primary Unit, 5A25, was activated after the OIS incident, and depicted Miramontes being taken into custody. Other units that arrived post OIS did not capture any relevant footage.

Body Worn Video (BWV)

Officer Shelley's BWV was not activated at the time of the OIS; however, Officer Shelley turned on his BWV after the OIS, but the two minutes without sound recorded an angle looking up thru the windshield and Officer Shelley was observed firing his service pistol two times through the windshield. Miramontes' actions prior to the OIS could not be observed. Officer Antiporda's BWV was not activated during the OIS; however, he did turn on his BWV post OIS.

Social Media

Personnel assigned to FID's Cyber Unit monitored social media outlets from the date of the incident until the date of submission of this investigation. No additional evidence, information or witnesses were identified.

Department Video

A surveillance camera, located inside of Miramontes' holding cell, captured Miramontes demonstrating to Officer Rankin how he simulated pointing a handgun at the officers (Control No. 723819).

Outside Video

Cellular telephone video of Miramontes after the OIS provided by Crystal Padilla (Control No. 313246).

Photographs

Photographs of the OIS scene and associated evidence are stored under Control Nos. D0640247 and D0640248.

Notifications

On January 27, 2018, at 1215 hours, the Department Operations Center (DOC) notified FID Lieutenant II Jeffrey Wenninger, Serial No. 30572, of the OIS at 423 Bay View Avenue. At 1330 hours, FID Detective II Nicholas Pikor, Serial No. 35384, was the first FID personnel on scene (Addendum No. 8).

Personnel at Scene

A complete list of personnel who responded to the scene is contained within the investigative case file.

Communications

Copies of Communication Division printouts relative to this incident, Incident No. 180127001940, are on file at FID. The digital recorded interviews of the involved and percipient officers and civilian witnesses are stored in the Training Evaluation and Management System (TEAMS II) database.

Justice System Integrity Division Review

This case did not meet the criteria for presentation to the Justice System Integrity Division (JSID).

Investigators' Notes

1. Miramontes was involved in three additional similar incidents between January 27 and February 6, 2018. The following is a summation of each incident:

On January 27, 2018, at 0340 hours, uniformed Harbor Division patrol officers were engaged in a traffic stop at Wilmington Avenue and Anaheim Street when Miramontes ran in their direction and simulated pointing a handgun at them. Miramontes was detained, questioned, and released.

On January 27, 2018, this information was disseminated to the Day-Watch roll call that was attended by Officers Shelley and Antiporda.

On January 30, 2018, at approximately 1610 hours, Miramontes was in the area of King Avenue and C Street, when he simulated pointing a handgun at officers working Harbor Patrol. Miramontes was arrested for 69 PC—Resisting Arrest. When presented with this case, the DA's office declined to file charges against Miramontes, and he was released.

On February 6, 2018, at approximately 0445 hours, Miramontes was in the area of Neptune Avenue and C Street, when he ran up to a Patrol Unit and simulated pointing a handgun at the police officers. Miramontes lifted his shirt, showed the officers that he was not armed, then proned himself out. Miramontes was then detained without further incident, and he was placed on a 72-hour Mental Evaluation hold.

Force Investigation Division, MEU, and the Harbor Patrol Commanding Officer worked together in an effort to provide Miramontes mental health resources. Miramontes was placed on a 14-Day Mental Evaluation hold.

2. Officer Antiporda did not activate the DICVS until after he realized it was not on, which occurred after Miramontes was taken into custody. The DICVS pre-event buffering provided for one minute of video, absent the audio, prior to the activation. Officer Shelley stated he did not activate the DICVS because he did not observe anyone in the park that resembled the description of the suspects.
3. Miramontes admitted acting as if he was in possession of a handgun. He stated that he did not know why he did it, but he did not want to hurt himself. Miramontes demonstrated how he simulated pointing a handgun at the officers. He stated he loved attention. When asked how his actions were going to be interpreted by the police officers, Miramontes stated *"Oh damn, they felt threatened. If I was an officer, sir, I would have aimed for the head, sir."* Miramontes admitted that, in addition to this incident, he simulated a handgun at officers earlier that morning at the intersection of Wilmington Boulevard and Anaheim Street. Miramontes added, *"I need to stop doing that, Sir. But that thing, I deserve to go to jail for doing that, because that's putting their lives in danger."*¹³ Miramontes stated that he is bi-polar and takes Xanax.
4. Officers Ibarra and Villegas responded to the incident with a female 5150 WIC detainee handcuffed and seat belted in the rear seat of their police vehicle. Officer Ibarra stated they were transporting the detainee to Harbor Station when the help call was broadcast. He estimated their response was approximately one mile, and he was concerned because he was familiar with the propensity for gang activity in the park. The decision to respond was also influenced by his belief that the geographic characteristics of the division often result in long response times.

¹³ Miramontes, Page 8, Lines 24-25 and Page 9, Lines 2-4.

5. Officer Ibarra did not activate his BWV until after Miramontes was handcuffed. He stated he had worked an assignment to Vice before being assigned to patrol and had not become fully accustomed to activating the BWV, especially when confronted with stressful tactical scenarios. The DICVS was activated when he activated the Code-3 equipment to respond to the help call. It captured their response but the activities at scene were not captured because their police vehicle was parked directly behind the primary unit.
6. Officer Shelley's pistol striker plate was replaced with an aftermarket striker plate with an emblem of the American Flag. Officer Shelley was directed to the Department armorer to have the stock striker plate re-installed.
7. Officer Antiporda indicated that he recounted Miramontes actions to "*a couple of officers*" prior to being admonished and separated by a supervisor. Officer Antiporda explained he told them that Miramontes got off the bike and took a two-hand shooting stance. He attributed discussion(s) to the adrenalin he experienced from the incident. He stated he did not discuss the incident with anyone other than his officer representative after he was admonished.
8. Officer Kirkham could not remember whether he transitioned his rifle selector switch [safety] from safe to fire. The selector switch was obstructed in Officer Kirkham's BWV as he held the rifle at the low-ready, but the selector switch was captured in the safe position, prior to and immediately following the rifle being held at the low ready.

Supplemental FID Report¹⁴

On January 10, 2019, Force Investigation Division was requested by the Inspector General's Office to conduct a follow-up interview on F008-18 with Police Officer II. Terry Shelley, Serial No. 32129. The additional interview is to inquire further about a dark object Officer Shelley indicated he observed in his depiction of events in his initial interview.

Officer Shelley was interviewed on January 12, 2019. During the second interview, Officer Shelley advised that when the suspect reached towards his waistband he observed an object he believed was a firearm. He based this belief primarily on the way the suspect reached towards his waistband.

Officer Shelley advised the first and last time he observed the dark object was when the suspect reached towards his waistband. Officer Shelley could only describe the object as dark and approximately three to four inches in length.

According to Officer Shelley, once he fired his rounds the suspect went directly to the ground with his arms out, and he did not observe the suspect reach towards his pockets. Upon the suspect being taken into custody, no black object consistent with

¹⁴ On January 14, 2019, the Commanding Officer, FID issued a supplemental report regarding this case.

that described by Officer Shelley was recovered from the ground or the suspect's waistband area.

CHIEF OF POLICE REPORT¹⁵

Chief of Police Findings

Tactics – Tactical Debrief, Officer Antiporda. Administrative Disapproval, Officer Shelley.

Drawing/Exhibiting – In Policy, No Further Action, Officers Shelley and Antiporda.

Non-Lethal Use of Force – In Policy, No Further Action, Officer Shelley.

Lethal Use of Force – In Policy, No Further Action, Officer Shelley.

Chief of Police Analysis

Detention

- The suspect rode his bicycle in the direction of the officers and stopped. The suspect reached into his waistband and then took a shooting stance, simulating a handgun, which resulted in an OIS. The officers' actions were appropriate and within Department policies and procedures.

Tactics

- *Department policy relative to Tactical Debriefs is: "The collective review of an incident to identify those areas where actions and decisions were effective and those areas where actions and decisions could have been improved. The intent of a Tactical Debrief is to enhance future performance."*

Department policy relative to Administrative Disapproval is: "A finding, supported by a preponderance of the evidence that the tactics employed during a CUOF incident unjustifiably and substantially deviated from approved Department tactical training" (Los Angeles Police Department Manual, Volume 3, Section 792.05).

The evaluation of tactics requires that consideration be given to the fact that officers are forced to make split-second decisions under very stressful and dynamic circumstances. Tactics are conceptual and intended to be flexible and incident specific, which requires that each incident be looked at objectively and the tactics be evaluated based on the totality of the circumstances.

Tactical De-Escalation

- *Tactical de-escalation involves the use of techniques to reduce the intensity of an encounter with a suspect and enable an officer to have additional options to gain voluntary compliance or mitigate the need to use a higher level of force while maintaining control of the situation (Use of Force - Tactics Directive No. 16, October 2016, Tactical De-Escalation Techniques).*

¹⁵ The information provided in this section summarizes the analysis and findings set forth in the Chief of Police's report for this case.

Tactical de-escalation does not require that an officer compromise his or her safety or increase the risk of physical harm to the public. De-escalation techniques should only be used when it is safe and prudent to do so.

In this case, the suspect's immediate actions of taking a shooting stance and simulating a handgun, resulted in the officers being unable to attempt de-escalation techniques.

Faced with what was reasonably perceived to be an imminent threat of serious bodily injury or death, the officer utilized lethal force to stop the deadly threat.

During the review of the incident, the following Debriefing Topics were noted:

Debriefing Point No. 1 Tactical Communication

Officers must approach every contact with officer safety in mind. Complacency, overconfidence, poor planning, or inappropriate positioning can leave officers vulnerable to attack (California Commission on Peace Officer Standards and Training, Learning Domain 21).

Officers are trained to work together and function as a team. In order to ensure officer safety and help ensure an appropriate outcome, the primary officers and cover officers must effectively communicate with one another. Appropriate communication involves advising the primary officer of any critical occurrences or safety issues (California Commission on Peace Officers Standards and Training, Learning Domain 22).

Officer Antiporda broadcasted a Help Call at Bay View Avenue and E Street, directing units to respond north from D Street.

In this case, the similarities of sound between "D" and "E" prompted Communications Division (CD) to request the phonetic pronunciation of the cross street. Officer Antiporda responded to the request by restating, "D," Street, without providing the phonetic pronunciation.

As a result, Officers Smith and Kirkham initially responded north on Bay View Avenue from E Street, placing themselves downrange from the OIS location. Additionally, while CD was attempting to request the phonetic pronunciation a second time, Sergeant Clayson advised CD to hold the frequency resulting in CD discontinuing their attempt to clarify the appropriate cross street.

Based on the totality of the circumstances, the UOFRB determined, and the Chief concurred, that while identified as an area for improvement, Officer Antiporda's actions were not a substantial deviation from approved Department tactical training. The Chief directed that this be a topic of discussion during the Tactical Debrief.

Debriefing Point No. 2 Contact and Cover (Substantial Deviation – Officer Shelley)

The cover officer's primary role is to protect the contact officer. This officer provides protection from a position of surveillance and control. This officer must continue to monitor the suspect's actions as well as any potential threats in the area (Standardized Roll Call Training, Deployment Period 3/2005).

Officers must approach every contact with officer safety in mind. Complacency, overconfidence, poor planning, or inappropriate positioning can leave officers vulnerable to attack (California Commission on Peace Officer Standards and Training, Learning Domain 21).

Officer Shelley initiated contact and physically restrained a second possible ambush suspect without the benefit of a cover officer.

Operational success is based on the ability of officers to effectively establish designated roles and communicate during critical incidents. Officers improve overall safety by their ability to recognize an unsafe situation and work collectively to ensure a successful resolution.

In this case, although the suspect was compliant, Officer Shelley placed himself at a tactical disadvantage and took an unnecessary risk by contacting and physically restraining the suspect without waiting for additional resources.

Based on the totality of the circumstances, the Chief determined that Officer Shelley's decision to initiate contact and physically restrain a possibly armed suspect without the benefit of a cover officer was a substantial deviation, without justification, from approved Department tactical training. The Chief directed that this be a topic of discussion during the Tactical Debrief.

Additional Tactical Debrief Topics

- **Holding Drink in Left Hand and Service Pistol in Right Hand** – The investigation revealed that Officer Shelley drew his service pistol with his right hand and was involved in an OIS while holding a drink in his left hand. Officer Shelley is reminded of the importance of being prepared for tactical situations arising while investigating radio calls and to keep his hands free when conducting field investigations. The Chief directed that this be a topic of discussion during the Tactical Debrief.
- **Non-Conflicting Simultaneous Commands** – The investigation revealed that several officers gave simultaneous commands to the suspect during the incident. Although the commands were non-conflicting, the officers are reminded that simultaneous commands can sometimes lead to confusion and non-compliance by

the suspect. The Chief directed that this be a topic of discussion during the Tactical Debrief.

- **Less-Lethal Force Options** – The investigation revealed that there were no designated less-lethal cover officers as part of the arrest team when approaching the suspect to take him into custody. Although not required, the Chief would have preferred that a less-lethal force option be deployed in the event the suspect posed a situation where the deployment of a less-lethal force option was appropriate. The Chief directed that this be a topic of discussion during the Tactical Debrief.
- **Firearm Safety Rules** – The investigation revealed that while approaching Miramontes as part of the arrest team, Officer Antiporda allowed the muzzle of his service pistol to momentarily cover additional officers who assisted with taking Miramontes into custody. Officer Antiporda is to be reminded to not violate the Department's Basic Firearm Safety Rules. The Chief directed that this be a topic of discussion during the Tactical Debrief.

Command and Control

- Sergeant Ciezadlo responded and assumed the role of IC.

Sergeant Clayson responded, separated, monitored, and obtained a PSS from Officer Shelley.

Sergeant McCarthy responded, separated, monitored, and obtained a PSS from Officer Antiporda.

The actions of these supervisors were consistent with Department supervisory training and met my expectations of field supervisors during a critical incident.

Tactical Debrief

- In conducting an objective assessment of this case, the UOFRB determined, and the Chief concurred, that the tactics utilized by Officer Shelley substantially, and unjustifiably, deviated from approved Department tactical training, thus requiring a finding of Administrative Disapproval. Additionally, the UOFRB determined, and the Chief concurred, that the tactics of Officer Antiporda, did not deviate from approved Department tactical training.

Each tactical incident also merits a comprehensive debriefing. In this case, there were identified areas where improvement could be made. A Tactical Debrief is the appropriate forum for the involved personnel to discuss individual actions that took place during this incident.

Therefore, the Chief directed that Officers Shelley and Antiporda attend a Tactical Debrief and the specific identified topics are discussed.

Note: Additionally, the Tactical Debrief shall also include the following mandatory discussion points:

- Use of Force Policy;
- Equipment Required/Maintained;
- Tactical Planning;
- Radio and Tactical Communication (including Code Six);
- Tactical De-Escalation;
- Command and Control; and,
- Lethal Force.

General Training Update (GTU)

- On February 8, 2018, Officers Shelley and Antiporda attended a GTU. All mandatory topics were covered including Force Option Simulator, Ambush Tactics, and Weapon Manipulations.

Drawing/Exhibiting

- *Department policy relative to drawing and exhibiting a firearm is: "An officer's decision to draw or exhibit a firearm should be based on the tactical situation and the officer's reasonable belief there is a substantial risk that the situation may escalate to the point where deadly force may be justified" (Los Angeles Police Department Manual, Volume 1, Section 556.80).*

According to Officer Shelley, he and Officer Antiporda were driving in their vehicle at approximately 5-10 miles per hour, when Miramontes crossed back to the west sidewalk from the other side of the road. Miramontes rode in a circle while watching the officers. Miramontes then bolted out between two parked cars and immediately turned toward the officers. Miramontes quickly rode directly at them, jumped off the pedals and straddled his bicycle. Miramontes lifted his shirt with his left hand and grabbed his waistband with his right hand. Officer Shelley then observed a dark object in Miramontes' hand as Miramontes brought his hands up very quickly and punched out into a shooting stance with his left hand cupped under his right hand. Believing that Miramontes had a gun and was going to kill him and Officer Antiporda, Officer Shelley drew his service pistol.

Officer Shelley recalled, "And then, well, no I guess, when we got to a certain location that's when he bolted out and then he came at us and he started reaching for his waistband and, you know, and I'm thinking oh, there's going to be an ambush. It's a gun and he's going to - - he's going to shoot me and so - - so that's why I drew out on him."¹⁶

¹⁶ Shelley, Page 20, Lines 22-25, Page 21, Lines 1-2.

According to Officer Antiporda, he first observed Miramontes approximately 30 to 40 feet north of them. Miramontes rode his bicycle from the west sidewalk to the street, in between cars, and then rode fast and aggressively towards them. Miramontes got off his bike, took a couple steps towards them, and took a shooting stance. Officer Antiporda slowed the vehicle and put it in park as he simultaneously heard shots fired. He observed Miramontes immediately go to the ground in a prone position. Officer Antiporda unbuckled his seatbelt and exited the vehicle. Officer Antiporda assumed a position of cover behind his driver's side ballistic door panel and drew his service pistol.

Officer Antiporda recalled, "He got off his bike, walked a couple of steps, and took a shooting stance. At that point, I put - - I slowed the vehicle and I put it on (sic) park. And then while I was doing that, I heard the shots fired. So I - - I unbuckled, unholstered, and got out of the - - opened the - - I opened the door. Okay. As - - as soon as the shots fired, he immediately went down. I feared for my safety. I thought I was going to get shot, so I - - I unholstered to defend myself."¹⁷

Based on the totality of the circumstances, the UOFRB determined, and the concurred, that an officer with similar training and experience as Officers Shelley and Antiporda, while faced with similar circumstances, would reasonably believe that there was a substantial risk the situation may escalate to the point where deadly force may be justified.

Therefore, the Chief found Officers Shelley and Antiporda's Drawing/Exhibiting to be In-Policy, No Further Action.

Note: In addition to the above listed employees, there were additional personnel that either drew or exhibited firearms during the incident. This Drawing/Exhibiting was appropriate and requires no specific findings or action in regard to these officers.

Additionally, the Chief was critical of Officer Kirkham's deployment of the Patrol Rifle in this specific situation. The Chief would have preferred that a weapon system be deployed that was more appropriate for the tactical situation.¹⁸

Non-Lethal Use of Force

- *It is the policy of this Department that personnel may use only that force which is "objectively reasonable" to:*

¹⁷ Antiporda, Page 10, Lines 5-11 and Page 21, Lines 3-5.

¹⁸ Starting September 2018, the Los Angeles Police Department has implemented a supplemental training program for the Patrol Rifle Cadre, which emphasized the proper selection of weapon systems based on the circumstances of the incident.

- *Defend themselves;*
- *Defend others;*
- *Effect an arrest or detention;*
- *Prevent escape; or,*
- *Overcome resistance (Los Angeles Police Department Manual, Volume 1, Section 556.10).*

Officer Shelley – Firm grips, takedown

- According to Officer Shelley, when he started walking McColoum to the curb area, McColoum tried to pull away and started yelling at Miramontes. Officer Shelley used both of his hands on McColoum's left bicep and applied downward pressure to put McColoum on the ground into a seated position.

Officer Shelley recalled, "He - - he - - when - - when he like tried to break from me I stopped him and I just - - I just kind of pulled on his arm, you know, hey, sit down and then - - and then he - - and he sits down on the sidewalk part...I had - - I have a hold of his bicep...It was both my hands. And then - - and then I - - I had a hold of him on his left - - left arm by his bicep and - - and like the crook of his elbow and - - and I just used that to, you know, keep control of him."

When asked by an FID investigator if he applied downward pressure to sit McColoum down, Officer Shelley replied, "Yes."¹⁹

Based on the totality of the circumstances, the UOFRB determined, and the Chief concurred, that an officer with similar training and experience as Officer Shelley, while faced with similar circumstances, would believe that this same application of non-lethal force would be reasonable to prevent McColoum's escape.

Therefore, the Chief found Officer Shelley's Non-Lethal Use of Force to be In Policy, No Further Action.

Lethal Use of Force

- *Law enforcement officers are authorized to use deadly force to:*
 - *Protect themselves or others from what is reasonably believed to be an imminent threat of death or serious bodily injury; or,*
 - *Prevent a crime where the subject's actions place person(s) in imminent jeopardy of death or serious bodily injury; or,*
 - *Prevent the escape of a violent fleeing felon when there is probable cause to believe the escape will pose a significant threat of death or serious bodily injury to the officer or others if apprehension is delayed. In this circumstance, officers shall, to the extent practical, avoid using deadly force that might subject innocent*

¹⁹ Shelley, Page 42, Lines 6-21 and Page 42, Lines 22-24.

bystanders or hostages to possible death or injury (Los Angeles Police Department Manual, Volume 1, Section 556.10).

- **Officer Shelley** – .40 caliber, two rounds in a northerly direction, from an approximate distance of 51 feet.

According to Officer Shelley, he believed Miramontes had a gun and was going to kill him and Officer Antiporda. Officer Shelley drew his service pistol and fired two rounds from his service pistol at Miramontes from approximately 25 feet.

Officer Shelley recalled, “The - - the - - the suspect had on a blue plaid shirt. It was baggy and it was not tucked in. It was hanging over his pants. He - - he reached with his left hand, pulled up his shirt and ran his right hand underneath his shirt and was grabbing at the waistband.”

“As he did that I - - I saw a dark object. He - - as he’s pulling out that’s when I started drawing down and like - - like simultaneously as he’s coming up in his shooting stance with both hands, one hand cupped under - - his left hand cupped under his right hand in a shooting stance he - - he comes up very, very quickly and punches out and as he’s doing that I was also punching out simultaneously and fired two rounds.”²⁰

Based on the totality of the circumstances, the UOFRB determined, and the Chief concurred, that an officer with similar training and experience as Officer Shelley, would reasonably believe that Miramontes’ actions presented an imminent threat of death or serious bodily injury, and that the Use of Lethal Force would be objectively reasonable.

Therefore, the Chief found Officer Shelley’s Use of Lethal Force to be In Policy, No Further Action.

Additional

- **Aftermarket Striker Plate** – The investigation revealed that Officer Shelley’s service pistol was equipped with a cosmetic aftermarket striker plate. Officer Shelley was directed to have the original striker plate re-installed by the Department armory. Captain G. Espinoza, Serial No. 31041, Commanding Officer, Harbor Patrol Division, addressed this issue through divisional training. The commanding officers of OSB and OO concurred with this action. As such, the Chief deemed no further action necessary.
- **Reverence for Human Life** – The investigation revealed that Officers D. Ibarra, Serial No. 38642 and C. Villegas, Serial No. 43157, Harbor Patrol Division, responded to the Help Call with a subject in the backseat of their police vehicle. The

²⁰ Shelley, Page 35, Lines 18-25, Page 36, Lines 1-5.

subject had been placed under an involuntary hold due to mental illness. Captain Espinoza was advised and addressed this issue through divisional training, which was documented in the Learning Management System (LMS). As such, the Chief deemed no further action is necessary.

- **Body Worn Video (BWV) Activation** – The investigation revealed that Officer Ibarra did not activate his BWV during the incident. Captain Espinoza was advised and addressed this issue through divisional training, which was documented in LMS. As such, the Chief deemed no further action is necessary.
- **Chambering a Round in a Patrol Rifle While Seated in Police Vehicle** – The investigation revealed that Officer Kirkham removed his Patrol Rifle from the rifle rack inside of his vehicle. Officer Kirkham chambered a round while seated inside of his vehicle as he was still approaching the location. The UOFRB was critical, and the Chief concurred, that there is an increased possibility of inducing an unintentional discharge when exhibiting and chambering a round in the patrol rifle while seated inside a moving police vehicle. This was brought to the attention of Captain Espinoza who addressed the issue with divisional training. As such, the Chief deemed no further action is necessary.
- **Profanity** – The investigation revealed that Officer Smith utilized profanity while giving Miramontes commands. This was brought to the attention of Captain Espinoza who addressed the issue with divisional training. As such, the Chief deemed no further action is necessary.
- **Special Locations** – Captain Espinoza advised the UOFRB that as a result of this incident, as well as multiple other incidents involving Miramontes, Miramontes' home address has been entered in as a Special Location. Additionally, due to multiple incidents occurring at Wilmington Recreation Center involving Miramontes, that location is in the process of being entered as a Special Location. As such, the Chief deemed no further action is necessary.

Audio/Video Recordings

- **Digital In-Car Video System (DICVS)/ BWV** – Harbor Division vehicles were equipped with DICVS at the time of the incident. Officers Shelley and Antiporda's DICVS was activated after the OIS and captured Miramontes being taken into custody.

Harbor Division personnel were equipped with BWV at the time of this incident. Officers Shelley and Antiporda's BWV were activated after the OIS. However, due to the two-minute buffering, Officer Shelley's BWV recorded his actions during the OIS without any audio.

- **Outside Video** – Witness C. Padilla recorded the incident, after the OIS, with her cellular telephone.

Chief's Direction

- Although, it was determined that Sergeant Clayson, Officer Smith, and Officer Kirkham were not to be substantially involved in the incident and did not receive formal findings, the UOFRB determined, and the Chief concurred, that they would benefit from attending the Tactical Debrief to discuss lessons learned and enhance tactical performance during similar incidents. Therefore, the Chief directed Sergeant Clayson, along with Officers Smith and Kirkham, to attend the Tactical Debrief.

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INSPECTOR GENERAL REVIEW

Inspector General Analysis

Investigation Quality

- No significant issues of concern were identified in relation to investigation quality.

Training Issues

- No significant issues of concern were identified in relation to training.

Equipment Issues

- No significant issues of concern were identified in relation to equipment.

Detention

- The OIG concurs with the Chief's analysis that the officers' actions were appropriate and within Department policies and procedures with regard to the detention of Miramontes.

McColoum, a witness to the OIS, was initially detained by Officer Shelley due to the ongoing tactical situation and in order to establish his (McColoum's) involvement in criminal activity related to the perceived ambush of the officers.

McColoum was transported to Harbor Police Station where he was held for approximately five hours, and where he was interviewed by FID investigators. The investigation did not establish a basis for McColoum's protracted detention.

Tactical De-escalation

- The OIG concurs with the Chief's analysis.

Inspector General Recommendations

Tactics

- The OIG concurs with the Chief's findings.

Drawing/Exhibiting

- The OIG concurs with the Chief's findings.

Non-Lethal Use of Force

- The OIG concurs with the Chief's findings.

Lethal Use of Force

- The OIG concurs with the Chief's finding that the use of lethal force by Officer Shelley was In Policy.
- In its review of the use of lethal force by Officer Shelley, the OIG considered that he was suddenly and unexpectedly confronted by a suspect whose actions were consistent with the drawing and pointing of a handgun at Officer Shelley and his partner. Although Officer Shelley did not observe a handgun, he observed what he perceived as a dark object in Miramontes's waistband, and he also observed movements by Miramontes that were consistent with the production of a handgun from that waistband. Given these factors, the available evidence in this case supports the Chief's In Policy finding.



MARK P. SMITH
Inspector General